

1 completely and understand.

2 WITNESS JUNEAU: But, Chairman, and to back
3 into that description too, in the absence of a printed
4 directory, in the absence of a CD ROM and no link to
5 the Internet, but if you have your telephone, you can
6 go back to directory assistance. It seems to me to be
7 an equivalent service to what you can get on the
8 Internet. It's used pretty much the same way. A
9 person who goes --

10 COMMISSIONER GARCIA: Isn't a CD ROM used
11 exactly the same way?

12 WITNESS JUNEAU: Yes, Commissioner, it could
13 be used the same way. The difference is, though,
14 again, just like a paper directory, if you can't find
15 it or for some reason it was out of date, potentially
16 the Internet is going to stay updated and be more
17 current. A CD ROM is dated. It becomes obsolete or
18 begins to obsolete at the point it's --

19 COMMISSIONER GARCIA: Isn't that pretty much
20 what your argument -- isn't that precisely what the
21 companies want is to have their service be able to be
22 updated, their directory to be updated, and isn't that
23 the problem?

24 I mean, forget the Internet. You say that
25 the Internet, except for the advantage that you just

1 placed on the Internet comparing it to directory
2 assistance, meaning that it's up-to-date information,
3 that's precisely what the complainants here want is
4 up-to-date information, isn't it?

5 WITNESS JUNEAU: Well, it's -- if the
6 purpose is to publish -- that's true, what they want.
7 They want up-to-date information, but I've heard it
8 stated for a different purpose. The purpose was have
9 up-to-date information for the delivery of directories
10 and to sell Yellow Pages advertising, but not to
11 provide directory assistance service.

12 COMMISSIONER GARCIA: Which is one of the
13 things that you'd like is definitely not to have
14 directory assistance, for them to provide that;
15 correct?

16 WITNESS JUNEAU: Not under the DPDS tariff.
17 Under the DADS tariff --

18 COMMISSIONER GARCIA: Right.

19 WITNESS JUNEAU: -- we would be willing to
20 sell to anyone, yes.

21 COMMISSIONER CLARK: In your mind, why is it
22 appropriate to have two separate tariffs for providing
23 the same information?

24 WITNESS JUNEAU: Commissioner, the reason is
25 that they -- the value of that information as it's

1 used is different. The directory assistance, because
2 of its value to the customer, creates a value to the
3 directory assistance provider. The directory, the
4 published directory, has a different value in our
5 estimation.

6 COMMISSIONER CLARK: Let me ask you one
7 follow-up question. Why is it appropriate to price
8 this based on market as opposed to cost plus a
9 reasonable contribution? Why is this particular
10 service appropriately priced that way as opposed to
11 the cost?

12 WITNESS JUNEAU: Which one are you speaking
13 of?

14 COMMISSIONER CLARK: Why is it appropriate
15 to tariff both DPDS and DADS at a market price as
16 opposed to cost plus a reasonable contribution? And I
17 would define that as being 12%.

18 WITNESS JUNEAU: I think I'm giving you the
19 same answer and I don't want to seem like I'm evading
20 it. But it's based on the value that that service has
21 to the user, and it's not just the directory provider,
22 but it's to the end user of the directory itself for
23 the directory assistance service itself. And in
24 setting the market rate, you know, again we thought
25 coming into this that we had set a very, very low

1 market rate.

2 COMMISSIONER CLARK: Let me ask it
3 differently. Maybe that's what the confusion is.
4 There are some services that under our
5 Telecommunications Act, meaning the state
6 Telecommunications Act, and the Federal
7 Telecommunications Act that tell you how you can price
8 various services, and some of those services are
9 TELRIC or TSLRIC, but as I understand it, the notion
10 of the TELRIC is marginal cost plus a reasonable --

11 WITNESS JUNEAU: Which one was that?

12 COMMISSIONER CLARK: TELRIC, I think. I get
13 them confused. Really, what I'm getting at is why for
14 these services is it appropriate for you to look at
15 value of service as opposed to what it costs you to
16 provide the service?

17 WITNESS JUNEAU: In this situation -- I
18 mean, in one of the interrogatories we responded that
19 it was based on the TSLRIC cost, and I am not a cost
20 expert and don't portray to be, but one significant
21 difference that I'm aware of is that the cost in a
22 TSLRIC or just a common incremental cost study is not
23 complete cost. That is direct cost. It doesn't
24 include any indirect loadings or overheads. It is
25 simply the direct cost of providing the service.

1 COMMISSIONER CLARK: I just want to know why
2 is it appropriate to price these services on the value
3 in the market as opposed to what it cost you plus a
4 reasonable contribution?

5 WITNESS JUNEAU: Commissioner, I guess I
6 can't get to that answer because I wasn't aware that
7 what we had done was inappropriate. I don't mean to
8 be evasive to you. I know that you have tried to ask
9 me several ways, and I'm not coming back to any
10 different answer and I don't mean to be that way, but
11 I didn't realize we were perceived to be inappropriate
12 in our structure.

13 COMMISSIONER CLARK: Okay.

14 Q (By Mr. Pellegrini) Just a final question,
15 Mr. Juneau. One of Staff's key concerns in this
16 proceeding is whether independent publishers could
17 utilize the information procured under DPDS to avoid
18 the DADS tariff.

19 A Right.

20 Q I'm certain you understand this. In one
21 view, an Internet home page is really nothing more
22 than perhaps a more current version of what's
23 available in a printed directory; and if you accept
24 that, then how would you preserve the distinction
25 between directory assistance and directory

1 publication?

2 A The distinction we make is that the
3 directory itself is -- when it is published it's a
4 complete listing at that point in time of every name,
5 address and phone number available, whereas a
6 directory assistance service would be updated
7 continually, and it's subject to individual look-up in
8 the absence of that directory or the choice of not
9 using the directory.

10 Q So the difference really amounts to one of
11 currency?

12 A Currency and the use you choose to make of
13 it. It is a convenience. It's -- you know, you may
14 not want to go look for your directory for the cost of
15 a DA call. It is a choice, and certainly someone who
16 makes a DA call has either made that choice because
17 they don't have the directory or they just don't want
18 to go get it.

19 There obviously is a value in their mind
20 that that DA call then is worth not walking upstairs
21 to get the directory or not looking through the house
22 or some other reason. It's just more convenient. So
23 therein lies the value to the customer, and on that
24 basis then we have perceived that it has a value to
25 BellSouth and any other directory assistance provider.

1 MR. PELLEGRINI: Thank you, Mr. Juneau. We
2 have no further questions.

3 CHAIRMAN JOHNSON: Commissioners? (No
4 response.)

5 I have one question on your rebuttal, Page
6 7. You stated that Mr. Screven -- or the question
7 was, "Mr. Screven indicates that customer address
8 information associated with unpublished numbers should
9 be provided with the weekly business activity report.
10 Is that appropriate."

11 And I believe your main if not your only
12 rationale was that it's not appropriate because it
13 would compromise the service that BellSouth offers to
14 customers who pay to have their numbers omitted from
15 directories.

16 WITNESS JUNEAU: Yes, Chairman.

17 CHAIRMAN JOHNSON: I had some concerns with
18 that particular issue. I understand your general
19 proposition here, but there are several services that
20 BellSouth now offers that may compromise that
21 particular service, are there not? The caller ID box;
22 if you're an unlisted customer and you call someone,
23 will not your number and name show up?

24 WITNESS JUNEAU: I don't know, Chairman. I
25 don't know the answer to that question. I did not

1 think so, but I certainly am not sure.

2 **CHAIRMAN JOHNSON:** Could you give me a
3 late-filed just to answer that question, and say that
4 just in the context of this proceeding? Because
5 someone had called me and that was one of their
6 customer complaints, that they had an unlisted number
7 but it shows up if someone has a caller ID box. But
8 for purposes of this question and the way that you
9 answered it, could you provide me with a late-filed
10 response and the question that I'd like for you to be
11 able to respond to is if someone has an unlisted
12 number and they call someone with one of those caller
13 ID boxes, will their name and number appear in that
14 particular box, and is that not a service that
15 BellSouth offers.

16 **WITNESS JUNEAU:** Yes, Commissioner, we'll
17 add that to our late-filed exhibits.

18 **CHAIRMAN JOHNSON:** And I'll mark that as
19 Late-filed 9 and I'll name it Caller ID Question.

20 **WITNESS JUNEAU:** Certainly.

21 (Late-Filed Exhibit 9 identified.)

22 **CHAIRMAN JOHNSON:** Redirect?

23 **MR. CARVER:** No redirect.

24 **CHAIRMAN JOHNSON:** Exhibits? Exhibit 4, I
25 believe --

1 MR. PELLEGRINI: Staff would offer Exhibits
2 4, 5, and 6.

3 CHAIRMAN CLARK: Show those admitted without
4 objection.

5 (Exhibits 4, 5, 6 received in evidence.)

6 WITNESS JUNEAU: Let me just clarify. Those
7 are the three that are MLJ-1, 2, and 3?

8 CHAIRMAN JOHNSON: Yes.

9 WITNESS JUNEAU: That's correct.

10 CHAIRMAN JOHNSON: We have Late-filed
11 Exhibits, 2, 7, 8 and 9.

12 MR. PELLEGRINI: That's correct, Chairman.

13 CHAIRMAN JOHNSON: Do we have any
14 information as to how much time it would take to
15 supply these or how much time should we give the
16 parties to supply the information we requested?

17 MR. PELLEGRINI: What's a reasonable time?

18 CHAIRMAN JOHNSON: The witness appears to
19 have some response to BellSouth's late-filed.

20 WITNESS JUNEAU: Would it be appropriate for
21 me to ask the person that might be preparing the
22 late-filed exhibits what an appropriate time would be?
23 I'm not sure if I said a week or a month, which one
24 would be more appropriate?

25 CHAIRMAN JOHNSON: Staff, how would you

1 suggest we proceed?

2 MR. PELLEGRINI: Why don't we set the
3 deadline for two weeks from today, and if that proves
4 to be difficult, we can work something out.

5 WITNESS JUNEAU: Okay. That will be
6 acceptable.

7 CHAIRMAN JOHNSON: Then we will set the
8 deadline for the late fileds for two weeks from
9 today's date. To the extent that there's a problem,
10 you can let the Commission know; and that relates to
11 both -- to all four late-filed exhibits.

12 WITNESS JUNEAU: That's agreeable.

13 CHAIRMAN JOHNSON: Are there any other
14 matters?

15 MR. PELLEGRINI: None that I'm aware of,
16 Chairman Johnson.

17 CHAIRMAN JOHNSON: Mr. Juneau --

18 MR. PELLEGRINI: Excuse me. I might mention
19 that briefs are due --

20 CHAIRMAN JOHNSON: You can be excused,
21 Mr. Juneau.

22 (Witness Juneau excused.)

23 - - - - -

24 MR. PELLEGRINI: February 14th.

25 CHAIRMAN JOHNSON: And the briefing

1 schedule?

2 MR. PELLEGRINI: February 14th.

3 CHAIRMAN JOHNSON: Any further questions?

4 (No response.) Seeing none, this hearing is
5 adjourned. Thank you very much.

6 (Thereupon, the hearing concluded at
7 1:25 p.m.)

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1 STATE OF FLORIDA)

2 COUNTY OF LEON)

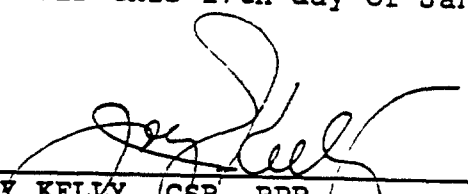
CERTIFICATE OF REPORTERS


3 We, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting and RUTHE POTAMI, CSR, RPR, Official
Commission Reporters,

5 DO HEREBY CERTIFY that the Hearing in Docket
6 No. 931138 was heard by the Florida Public Service
Commission at the time and place herein stated; it is
7 further

8 CERTIFIED that we stenographically reported
the said proceedings; that the same has been
9 transcribed under our direct supervision; and that
this transcript, consisting of 197 pages, constitutes
10 a true transcription of our notes of said proceedings
and the insertion of the prescribed prefiled
11 testimony of the witness.

12 DATED this 17th day of January , 1997.

13
14 
15 JOY KELLY, CSR, RPR
16 Chief, Bureau of Reporting
(904) 413-6732

17
18 
19 H. RUTHE POTAMI, CSR, RPR
20 Official Commission Reporter
(904) 413-6732

BellSouth Telecommunications, Inc.

January 21, 1997

Mr. Ken Bickford
The SunShine Pages
3445 N. Causeway Blvd.
4th Floor
Metairie, LA 70002

Dear Mr. Bickford:

In response to your inquiry, the following information is provided for further clarification. The BellSouth Directory Publishers Database Service (DPDS) allows a customer the right to use BellSouth white page listing information for the compilation, production, publication, correction and distribution of printed telephone directories, or CD ROM directories. The directory may be in alphabetical and /or numerically sequenced classified telephone directory format for general telephone number service. The information provided is solely BellSouth subscribers listing data as provisioned in the General Subscriber Tariff Number A38.2 which prohibits the provision of non-published or non-listed subscriber listing information. Additionally, listings for Independent Telephone Companies are not provided.

Other Local Exchange Company listing information may be obtained through negotiations as may be required by the owner of the listing data. It is recommended that you contact those entities for listing information.

If we can provide further assistance or information relative the current BellSouth DPDS product, please feel free to contact me at 1-800-615-0032.

Sincerely,



Linda L. Myler
Product Manager-Directory Publishers Database Service

U.S. Postal Service
Receipt for Certified Mail

 No Insurance Coverage Provided
 Do not use for International Mail (See reverse)

PS Form 3800 April 1995

Linda Myler	
Administrator of Directory Publishers Database	
BellSouth Telecommunications	
40M73 BellSouth Center	
675 W. Peachtree St. N.E.	
Atlanta, GA 30375	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt (Showing to Whom & Date Delivered)	
Return Receipt (Showing to Whom, Date, & Addressee's Address)	
TOTAL Postage & Fees	\$
Postmark or Date	

January 23, 1997

Linda Myler
 Administrator of Directory Publishers Database
 BellSouth Telecommunications
 40M73 BellSouth Center
 675 W. Peachtree Street, N.E.
 Atlanta, Georgia 30375

Kenneth W. Bickford
 Director of New Media

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Subscriber Listings

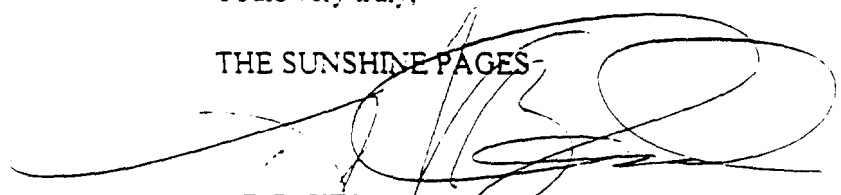
Dear Ms. Myler:

As per our conversation of Monday, January 20, 1997, this letter will serve to confirm your statement that BellSouth Telecommunications will sell or provide to the SunShine Pages subscriber listings information for subscribers of BellSouth only, and that BellSouth does not have, nor can it sell or provide, subscriber listings data for Competitive Local Exchange Carriers (CLEC) which compete with BellSouth in Tennessee, Florida, or Louisiana. This letter will also serve to confirm that any subscriber listings data obtained from a CLEC and published within a BellSouth Advertising and Publishing Company (BAPCO) directory within the bounds of the previously referenced states was obtained by BAPCO via a contractual relationship separate from BellSouth Telecommunications.

I enjoyed getting to know you over the phone and look forward to a long business relationship.

Yours very truly,

THE SUNSHINE PAGES


 KENNETH W. BICKFORD
 Director of New Media

SunShine Pages

September 24, 1997

Linda Myler
BellSouth
675 W. Peachtree St. NE
40M71
Atlanta, GA 30375

RE: Weekly Business Activity Reports

Dear Ms. Myler:

Please accept this as notice that we must cancel our requests for Weekly Business Activity Reports ("WBAR") in our Louisiana markets. For the last year and one-half, the WBAR has given us critical information on new businesses that have developed in a directory coverage area on an unbundled basis. BellSouth has reinterpreted its tariff to require purchase of these numbers on a bundled basis for an entire NNX. The cost has gone from a few hundred dollars to thousands of dollars due to this tariff reinterpretation. It is now cost prohibitive. Unless BellSouth honors its previous tariff procedure, we have no choice but to cancel this service and file a complaint with the Federal Communications Commission.

Very truly yours,



Marlene Patin
Vice President
Production

cc: Michael Finn, Esq.
Magdalen Blessey Bickford, Esq.
William Hammack

Tel: 504.832.9835
Fax: 504.832.9931

3445 N. Causeway
4th Floor
Metairie, LA 70002

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WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

25 November 1997

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

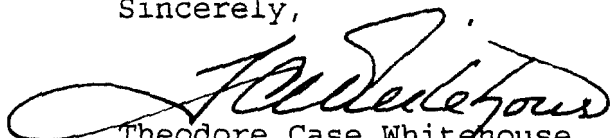
Re: CC Docket No. 97-231, Application By BellSouth
Corporation, BellSouth Telecommunications, Inc.
and BellSouth Long Distance, Inc. For Provision
Of In-Region, InterLATA Services in Louisiana

Dear Ms. Salas:

Enclosed please find an original and six copies
of the Association of Directory Publishers' Comments
concerning the above-referenced Application. In addition
to the original and six copies, we also attach a diskette
version of the filing formatted in WordPerfect 5.1 (read
only).

If you have any questions concerning this filing,
please contact the undersigned.

Sincerely,



Theodore Case Whitehouse
Counsel for the Association
of Directory Publishers

Attachments

WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

August 4, 1997

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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COMMISSION SECRETARY

Dear Mr. Caton:

Re: CC Docket No. 96-115

On July 31, 1997, the Association of Directory Publishers ("ADP") met with Patrick Donovan, Dorothy Attwood, Dave Konuch, Raelynn Tibayan Remy, and Lisa Choi of the Common Carrier Bureau and Paula Silberthau of the Office of the General Counsel to discuss the status of the above-referenced proceeding.

ADP also discussed its belief that the Eighth Circuit's decision in Iowa Utilities Bd. did not affect the Commission's authority with respect to subscriber list information issues. In support of its belief, ADP circulated the attached paper. ADP also circulated an attachment containing (1) local exchange carriers' telephone directory advertisements, (2) articles about BOCs' Internet directories, and (3) examples of telephone directories containing multi-state listings in a single directory. That attachment is appended to this filing.

Representatives of ADP included Rick Lewis, Jane Clark, Bill Hammack, Stephen Wiznitzer, Theodore Whitehouse, and the undersigned

Mr. William Caton
August 4, 1997
Page 2

Pursuant to the Commission's ex parte rules, copies of this submission are being filed with the Secretary's Office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael F. Finn", with a stylized flourish at the end.

Michael F. Finn

Enclosures

CC Without Enclosures:

Dorothy Attwood
Patrick Donovan
Dave Konuch
Raelynn Tibayan Remy
Lisa Choi
Paula Silberthau

**THE COMMISSION HAS THE AUTHORITY TO PROMULGATE REGULATIONS
IMPLEMENTING SECTION 222(e).**

I. Introduction.

The comments and record in CC Docket No. 96-115 demonstrate that implementing rules are necessary and desirable to give effect to Congress' intent in Section 222(e). As we see it, the record clearly establishes that rules should be adopted. The question this paper addresses is whether the Commission may adopt such rules. That question is precipitated by the Eighth Circuit's 18 July 1997 decision in Iowa Utilities Board v. FCC.¹ As shown below, the Commission's authority to adopt such rules is undisturbed by what we (and, we assume the Commission) perceive to be the erroneous ruling of the Eighth Circuit.

Section 222(e) presents a situation entirely different from that before the Eighth Circuit. Most notably, Section 222(e) is concerned with the promotion of competition in the classified telephone directory advertising and publication business (yellow pages). Furthermore, the statute contains no delegation to, let alone any mention of, state authority and therefore the Commission's jurisdiction is not at odds with any express grant to the states as was case in Iowa Utilities Bd. In any event, because the interstate and intrastate aspects of SLI are impossible to separate, the Commission -- in the event of any

¹ 1997 WESTLAW 403401 (8th Cir. 1997).

such conflict -- would have authority to issue regulations under Section 222(e).

II. The Commission's Authority Over Subscriber List Information Sold To Directory Publishers Is Not Confined By Section 2(b) Of The Act.

Section 222(e) focuses on fostering competition in the unregulated classified telephone directory advertising market (yellow pages) and is not concerned with telecommunications services as such. As pointed out in ADP's comments in CC Docket No. 96-115, classified directory advertising is a more than \$10 billion per year industry. It is not surprising therefore that many LECs historically refused to provide their listings to independent directory publishers (a publisher unaffiliated with a LEC) or attached such onerous conditions to their provision so as to amount to a refusal to deal.² Those types of activities help explain why today LECs hold a 96% market share.³ To promote competition in the classified directory advertising market, Congress enacted Section 222(e).

Section 222(e) requires LECs and CLECs to provide subscriber list information -- defined in Section 222(f) as name, address, telephone number, and "primary advertising classification" -- on

² In its comments, reply comments, and ex parte filings in CC Docket 96-115, ADP has supplied the Commission with numerous historical and more recent accounts of anticompetitive behavior by LECs. See also Floor statement of Rep. Barton, 141 Cong. Rec. H8498 (daily ed. Aug. 4, 1995).

³ See Floor statements of Rep. Barton, 141 Cong. Rec. H8498 (daily ed. Aug. 4, 1995) (discussing anticompetitive behavior by LECs); 142 Cong. Rec. H. 1160 (daily ed. Feb. 1, 1996) (same).

reasonable and nondiscriminatory rates, terms, and conditions to any entity wishing to publish a directory in any format. The inclusion of "primary advertising classifications" makes plain that Section 222(e) is aimed at the classified directory market. Indeed, the Conference Report⁴ -- which is the most persuasive evidence of congressional intent next to the statute itself⁵ -- expressly states that Section 222(e) was premised on "guarantee[ing] independent publishers access to subscriber list information at reasonable and nondiscriminatory rates, terms and conditions." Individual floor statements by two members of the conference committee further demonstrate that Congress intended Section 222(e) to open competition in the classified directory publishing market.⁶

In light of the above, Section 222(e) is not implicated by the "fence" of Section 2(b). That fence reaches only matters that are "for or in connection with intrastate communication service by wire or radio." Subscriber list information, for purposes of Section 222(e), is not such a matter. As shown above, Section 222(e) is concerned with the ability of independent directory publishers to acquire SLI for the purposes of soliciting yellow pages advertisements and publishing and

⁴ See H. R. Conf. Rep. No. 230, 104th Cong., 2d Sess. 205 (1996).

⁵ See Sutherland Statutory Construction § 48.08 (5th ed.).

⁶ See Floor statement of Rep. Bill Paxton, 142 Cong. Rec. E184 (daily ed. Feb. 6, 1996); Floor statement of Rep. Joe Barton, 142 Cong. Rec. H1160 (daily ed. Feb. 1, 1996).

distributing of the classified directories. Thus, while it is true that SLI may be gathered in conjunction with LECs' offering of telephone service, the sale of SLI to directory publishers for purposes of advertising solicitation and directory distribution cannot conceivably fall within the Section 2(b) fence.

Consequently, Section 2(b) is of no relevance to the Commission's authority to issue rules implementing Section 222(e).

III. Even If Section 2(b) Were Applicable, The Impossibility Exception Allows The Commission To Issue Regulations Covering SLI For Purposes Of Section 222(e).

Although ADP believes that Section 2(b) has no impact upon the Commission's authority under Section 222(e), the following discussion shows that even if Section 2(b) applied, the Commission would still possess regulatory authority based on the impossibility exception.

A. Overview Of Section 2(b) And The Impossibility Exception.

The Communications Act ("Act") establishes "a system of dual state and federal regulation over telephone service."⁷ Under Section 1 of the Act, 47 U.S.C. § 151, "[i]nterstate communications are totally entrusted to the FCC," which is charged with providing a "rapid, efficient, Nation-wide" wire and radio communications service.⁸ Regulatory authority over "charges, classifications, practices, services, facilities, or

⁷ Louisiana PSC v. FCC, 476 U.S. 355, 360 (1986).

⁸ National Ass'n of Reg. Util. Comm'rs v. FCC, 746 F.2d 1492, 1498 (D.C. Cir. 1984) (quoting 47 U.S.C. § 151).

regulations for or in connection with intrastate communications services by wire or radio of any carrier" is withheld from the Commission pursuant to Section 2(b) of the Act, 47 U.S.C. § 152(b).

Although Sections 1 and 2 superficially seem to create two distinct spheres of regulation, the Supreme Court has recognized that "the realities of technology and economics" blur the boundary line between federal and state regulatory domains.⁹ For example, virtually all telephone plant that is used to provide interstate service also is used to provide intrastate service.¹⁰ Thus, regulation of telephone lines and equipment almost inevitably affects both interstate and intrastate communications.¹¹ Consequently, Section 2(b) "does not create a simple division; rather, it creates a persistent jurisdictional tension."¹²

In recognition of that tension, the Supreme Court in Louisiana PSC stated that the Commission may issue regulations impacting upon intrastate matters only when the matter has

⁹ Louisiana PSC, 476 U.S. at 360. See also Public Utility Comm'n of Texas v. FCC, 886 F.2d 1325, 1329 (D.C. Cir. 1989) ("Texas PUC").

¹⁰ Louisiana PSC, 476 U.S. at 360.

¹¹ See, e.g., Texas PUC, 886 F.2d at 1333-1335; North Carolina Utils. Comm'n v. FCC, 552 F.2d 1036 (4th Cir.) ("NCUC II"), cert. denied, 434 U.S. 874 (1977); North Carolina Utils. Comm'n v. FCC, 537 F.2d 787 (4th Cir.) ("NCUC I"), cert. denied, 429 U.S. 1027 (1976).

¹² Public Serv. Comm'n of Md. v. FCC, 909 F.2d 1510, 1514 (D.C. Cir. 1990) ("Maryland PSC").